IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.792 OF 2004
IN
CHAMBER SUMMONS NO.1417 OF 2003
IN
SUIT NO.534 OF 2003

Lancelot s/o Theago John Baptist
D'Souza .. Appellant

v/s.

Satyanarayan Mahadev Malpani
& ors. .. Respondents

Ms.Purnima Bhatia for appellant.

Mr.Kiran Jain for respondent Nos.1 to 3.

Mr.J.G.Shetty for respondent No.4.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd December, 2004

P.C.

Heard.

2. Admit.

3. The advocate for respondent Nos.1 to 3 (original plaintiffs) waives service. Service on the other respondents is not necessary in the light of the controversy involved in the appeal.

3. From the impugned order it does not appear that the learned chamber Judge considered the aspects as to whether the proposed amendments were necessary to decide the real controversy in the suit and also whether the reliefs in respect of the proposed amendments had become time barred.

4. The matter, therefore, requires reconsideration by the learned chamber Judge.

5. We, accordingly, set aside the order dated 5th October, 2004 and restore the chamber summons No.1417 of 2003 in suit No.534 of 2003 to file for fresh consideration in accordance with law. We, however, clarify that it will not be open to the appellant to reagitate the issue of maintainability of chamber summons.

6. With the aforesaid observation, appeal is allowed. No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)